

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO, : PROMESA
as representative of : Title III
THE COMMONWEALTH OF PUERTO RICO *et al.*, : Case No. 17-BK-3283 (LTS)
Debtors.¹ : (Jointly Administered)

**URGENT MOTION OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO
FILE UNDER SEAL UNREDACTED OMNIBUS REPLY IN SUPPORT OF MOTION
FOR ORDER AUTHORIZING COMMITTEE TO PURSUE CERTAIN CAUSES OF
ACTION ON BEHALF OF COMMONWEALTH AND GRANTING RELATED RELIEF**

To the Honorable United States District Judge Laura Taylor Swain:

The Official Committee of Unsecured Creditors of all title III debtors (other than COFINA) (the “Committee”) submits this *Urgent Motion of Official Committee of Unsecured Creditors to File Under Seal Unredacted Omnibus Reply in Support of Motion for Order Authorizing Committee to Pursue Certain Causes of Action on Behalf of Commonwealth and Granting Related Relief* (the “Motion to Seal”), and hereby states as follows:

RELIEF REQUESTED

1. The Committee has already filed a public, partially-redacted version of its

Omnibus Reply in Support of Motion for Order Authorizing Committee to Pursue Certain Causes

¹ The Debtors in these Title III cases, along with each Debtor’s respective Title III case number listed as a bankruptcy case number due to software limitations and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK-3283 (LTS)) (Last Four Digits of Federal Tax ID: 3481), (ii) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17-BK-3566 (LTS)) (Last Four Digits of Federal Tax ID: 9686), (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17-BK-3567 (LTS)) (Last Four Digits of Federal Tax ID: 3808), (iv) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17-BK-3284 (LTS)) (Last Four Digits of Federal Tax ID: 8474), and (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17-4780 (LTS)) (Last Four Digits of Federal Tax ID: 3747).

of Action on Behalf of Commonwealth and Granting Related Relief [Docket No. 6458] (the “Reply”). This Motion to Seal seeks the Court’s permission to file the full, unredacted version of the Reply under seal to prevent the public disclosure of certain confidential information relating to the ongoing investigations of the Committee and the Oversight Board² into potential avoidance actions and other causes of action that may be pursued on behalf of the Debtors.

JURISDICTION AND VENUE

2. The United States District Court for the District of Puerto Rico has subject matter jurisdiction over this matter pursuant to section 306(a) of PROMESA. Venue is proper pursuant to section 307(a) of PROMESA.

3. The statutory basis for the relief requested herein is found in sections 105(a) of the Bankruptcy Code and Bankruptcy Rule 9018, made applicable to the title III cases by sections 301(a) and 310 of PROMESA, and Local Rule 9018-1 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the District of Puerto Rico (the “Local Rules”).

BASIS FOR RELIEF REQUESTED

4. On April 22, 2019, the Committee filed a public, partially-redacted version of the Reply. The Reply argues in further support of the Committee’s motion asking the Court to appoint the Committee as trustee and otherwise confer standing upon it to pursue certain causes of action against underwriters, advisors, and other third parties that participated in Puerto Rico’s bond issuances in the years leading to its fiscal crisis (the “Motion”).³ As in the Motion, the Reply outlines a number of reasons why the Committee should be permitted to pursue these

² Capitalized terms used but not defined herein shall have the meanings given to them in the Reply.

³ See *Motion of Official Committee of Unsecured Creditors for Order Authorizing Committee to Pursue Certain Causes of Action on Behalf of Commonwealth and Granting Related Relief* [Docket No. 6325].

causes of action, including that the causes of action are meritorious and valuable and that the Oversight Board has unjustifiably refused to pursue them.

5. As part of the Reply, the Committee attaches certain lists of claims disclosed to the Committee by the Oversight Board and the Special Claims Committee pursuant to the Procedures Order and as part of the parties' Stipulation. This information is confidential and legally sensitive. Some of it is subject to an express agreement on confidentiality by and among the Committee, the Oversight Board, and its Special Claims Committee. The Committee also attaches as an exhibit to the Reply its own confidential analysis discussing the causes of action that the Committee seeks authority to pursue.

6. The confidential information contained in these exhibits and references thereto have been redacted from the version of the Reply filed on the public docket. If disclosed to the public, this information may be harmful to the legal, strategic, and economic interests of the Debtors, the Oversight Board, and the Committee. As such, to protect these interests, and to comply with the parties' agreement on confidentiality, the Committee believes that the full, unredacted version of the Reply should be kept under seal. The redacted version may continue to be available in the public file.

7. As the Court may recall, the exact issues described above were also present in connection with the filing of the Motion. Therefore, the Committee filed an urgent motion requesting authorization to file the Motion under seal [Docket No. 6326], which relief was granted by the Court [Docket No. 6345]. This Motion to Seal should be granted for the same reasons that the Court granted the Committee's earlier motion to seal.

8. The Committee accordingly requests that the Court grant the Motion to Seal and allow the Committee to file under seal the full, unredacted version of the Reply. *See FED. R.*

BANKR. P. 9018 (the court may “make any order which justice requires” in order to, among other things, “protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information” or to “protect governmental matters that are made confidential by statute or regulation”).

NOTICE

9. Counsel for the Committee has conferred with counsel for the Objectors. Specifically, the Committee has informed Objectors’ counsel of its intent to file the Motion to Seal has offered to share with counsel an unredacted version of the Reply and its exhibits on an attorneys’ eyes only basis, subject to the Oversight Board’s consent with respect to confidential information of the Oversight Board. As of the time of this filing, counsel for the Special Claims Committee has indicated that it does not consent to the relief requested herein. Responses have not yet been received from counsel to the other Objectors.

CERTIFICATION

10. Pursuant to Local Rule 9013-1 and paragraph I.H of the Eighth Amended Case Management Procedures [Docket No. 4866-1], the Committee hereby certifies that it has (a) carefully examined the matter and concluded that there is a true need for an urgent hearing; (b) not created the urgency through a lack of due diligence; (c) made a bona fide effort to resolve the matter without a hearing; (d) made reasonable, good faith communications in an effort to resolve or narrow the issues being brought to the court; and (e) conferred with the parties, who do not oppose the relief requested herein.

CONCLUSION

11. For the reasons stated above, the Committee requests that the Court grant the Motion to Seal and permit the filing of the full, unredacted version of the Reply under seal.

[Remainder of page intentionally left blank.]

WHEREFORE, the Committee respectfully requests that this Court enter an order, substantially in the form attached hereto as Exhibit A, granting the relief requested herein, and granting the Committee such other relief as this Court deems just and proper.

Dated: April 22, 2019

/s/ Luc A. Despins
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